

Mr. SPEAKER.—When the Chair is giving a ruling, no hon'ble member should stand up and speak. In view of the ruling on the Motion of Sri Shettar, and since no new point has been made out here, the Chair rules that it is not necessary to permit any Motion.

Sri G. CHANDRAKANTH.—Whenever a member gives, notice under rule 312...

Mr. SPEAKER.—After the Ruling is over, it will be a discourtesy to the Chair to Comment on it.

Now we proceed to Bills.

MYSORE IRRIGATION (AMENDMENT) BILL 1968

Motion to Consider

Sri D. PARAMESWARAPPA (Deputy Minister for Major Irrigation and Electricity).—

Sir, and beg to move.

“That the Mysore Irrigation (Amendment) Bill, 1968 be taken into consideration.”

Mr. SPEAKER.—Motion moved :

“That the Mysore Irrigation (Amendment) Bill, 1968 be taken into consideration.”

Sri M. NAGAPPA.—Sir, I have a Point of Order. Section 32 under Clause 11 is being amended as follows :—

“In section 32 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely :—

“(4) In all cases in which the person who has sown or grown any unauthorised crop or allowed any land to be grown or sown with such unauthorised crop cannot be found, the holder of the land, in addition to such other person concerned, shall—

(a) be liable for contravening the provisions of this section ;
and

(b) also be liable to pay such water rate, as may be determined by the Irrigation Officer, not being less than five times and not exceeding ten times the water rate which he would otherwise have been required to pay : ”

According to this clause, a person is going to be punished twice for one offence.

Mr. SPEAKER.—The Hon'ble Member can participate in the Debate and point it out then. Where is the difficulty ?

SRI M. NAGAPPA.—This clause itself violates the provisions of Article 20 of the Constitution.

MR. SPEAKER.—We are hard-pressed for time. So the better way of dealing with it is to refer to it when the clause by clause consideration is taken up.

SRI M. NAGAPPA.—If this point is decided, it need not be considered later on.

My submission is that as per clause 11, for a single offence a person is going to be convicted twice once as laid down under clause 11 (a), and second as laid down under clause 11 (b). In this connection, I would like to read Section 55 of the Principal Act; it says:—

“OFFENCES UNDER THE ACT. Whoever voluntarily and without proper authority—

...contravenes any provisions of this Act, shall, on conviction, be punished for offences with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both and with imprisonment for a term which extend to two months, or fine which may extend to five hundred rupees or with both.”

Apart from two months imprisonment, there is a fine of Rs. 500 also. The Government, under section 55, is competent not only to impose a fine up to Rs. 500 but also to send him to jail for two months. An amendment is now being brought that he is also liable to pay such water rate as may be determined by the Irrigation Officer not being less than five times and not exceeding ten times the water rate which he would otherwise have been required to pay. This also contravenes the same thing. As per Article 20 of the Constitution, for one offence the man should not be punished twice. He has to be punished only once. For the information of the Hon'ble House, I will read Article 20 of the Constitution. It says:—

“20. (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

“(2) No person shall be prosecuted and punished for the same offence more than once.”

As per clause 11 (b) of the amending Bill, he is going to be punished twice for the same offence, and again by way of an amendment, he is liable to be punished to pay such water rate as may be determined by the Irrigation Officer not being less than five times and not exceeding ten times the water rate which he would otherwise have been required to pay. Therefore, I submit that this sub-clause (b) is in contravention of

Article 20 of the Constitution and this may be deleted from the Bill, because it would not come within the competency of the Legislature.

Sri K. SANGANA GOWDA.—Article 20 of the Constitution comes in the way of a person being booked and prosecuted twice for the same offence. There are two provisions; under the principal Act, there is the penal section and under the amending clause a person is liable to be punished by levying the tax or water rate from five to ten times. At this stage, the question of prosecution and punishment twice, or the operation of Article 20 of the Constitution, does not arise. Therefore, I submit that there is no Point of Order as it cannot be sustained at all.

Mr. SPEAKER.—Hon'ble Member Sri Nagappa has raised a Point of Order. He says that double punishment provided under the proposed amending clause 11 is not valid and it violates the constitutional provision of Article 20. Hon'ble Member Sri K. Sangana Gowda says that there is no violation of Article 20 of the Constitution in as much as the question of double prosecution is not involved. For the purpose of appreciating the objections raised and the support given by the hon'ble members, I shall just cite the provisions of Article 20 which says:—

“20 (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.”

It is clear from this that no person can be prosecuted twice for the same offence. The provisions of Clause 11 speak of only one prosecution so far as the breach of rules is concerned and the other is merely penalty. Levy of penalty does not amount to prosecution; prosecution has got a peculiar technical meaning in the Criminal law. It means that there should be a charge-sheet, charges have to be framed if it is a warrant case, and no charges need be framed if it is a summons case. There is a clear cut procedure for prosecution. Therefore, as regards the first part, namely, “liability of the person to be prosecuted for breach of the rule”, once that is fulfilled, but the other part, namely, “levying of penalty” does not involve prosecution. There is nothing criminal about it. Penalty, of course, has got to be levied. The officer in charge while considering whether to levy or not to levy any penalty will take into account the gravity of the situation and will either not levy penalty or will levy penalty. The imposition of penalty does not involve any prosecution as such which is contemplated under article 20. I, therefore, hold that there is no force in the point of order raised by the hon'ble member Sri Nagappa.

2-30 P.M.

†Sri D. PARAMESWARAPPA.—As regards the objects and reasons for bringing this amending Bill, I wish to draw the attention of the House to the principal Act, namely Act 16 of 1965. Under that Act field channels are constructed by the beneficiaries or at their instance by the Government and the cost of the same will be recovered by Government later on as arrears of land revenue. Now the Government has taken a decision that all field channels of less than 1 cusec capacity should be constructed at the cost of the Government.

The next point is that there have been instances of unauthorized irrigation and in such cases the Government thinks that it is desirable to levy penal water rate as a sort of punishment. That is the main object of this amending Bill.

For better appreciation of the amendments, I would like to take the House to the various sections that are sought to be amended. The first amendment is to section 16 of the Act. It is felt that the procedure prescribed under this section for acquiring land is opposed to principles of natural Justice. The Deputy Commissioner acquiring the land without giving reasonable opportunity to the persons concerned to show cause why the land should not be acquired, is opposed to principles of natural justice. Therefore it was thought desirable to amend the procedure and make it obligatory for the Deputy Commissioner to issue a notice before acquiring the land to show cause why the land should not be acquired and then come to his conclusion after giving a reasonable opportunity to the party to be heard. This will meet the principles of natural justice. It is for this purpose that sub-section (1) of this section is sought to be amended.

According to sub-section (2) of the principal Act the amount of compensation to be awarded for the land acquired is based on certain amount paid by the landowner as land revenue. It is stated there that the compensation to be awarded shall be in the case of lands which are assessed as wet 100 times and in the case of lands which are assessed as dry 200 times, the land revenue. The Supreme Court has observed in a certain case that the full market value plus 15 per cent solatium should be paid in respect of lands to be acquired for purpose of construction of field channels. Keeping in view this decision of the Supreme Court it was thought desirable that the provisions of the Land Acquisition Act, 1894, should be complied with. Therefore it is suggested that in sub-section (2) of section 16, the words commencing from 'and compensation to be awarded' and ending with 'in respect of the land acquired' and and Explanation I and Explanation II shall be omitted. In view of the fact that the Government has taken the responsibility to construct the field channels at their own cost, it is desirable to omit sections 18 and 19.

In section 20 of the Act the words used are "every person having a right to use the field channel". This pre-supposes that the field channels

must have been constructed by a beneficiary. According to the amendment, when the Government takes the responsibility for it, it is not necessary to retain these words. The word 'user' will be a better word than these words.

I need not go in detail into the various sections that are sought to be amended. I commend this Bill for the consideration of the House.

Mr. SPEAKER.—The Question is :

“That the Mysore Irrigation (Amendment) Bill, 1968, be taken into consideration.”

The motion was adopted.

CLAUSES

Mr. SPEAKER.—The question is :

“That clauses 2 to 14 both inclusive stand part of the Bill.”

The motion was adopted.

Clauses 2 to 14 inclusive were added to the Bill.

Mr. SPEAKER.—The question is :

“That the clause 1, the Title and the Preamble stand part of the Bill.”

The motion was adopted.

The clause 1, the Title and the preamble were added to the Bill.

Motion to pass.

Sri D. PARAMESWARAPPA.—Sir, I beg to move :

“That Mysore Irrigation (Amendment) Bill, 1968 be passed.”

Mr. SPEAKER.—The question is :

“That the Mysore Irrigation (Amendment) Bill, 1968 be passed.”

The motion was adopted.

MYSORE HEALTH CESS (AMENDMENT) BILL

Motion to Consider.

Sri Y. RAMAKRISHNA (Minister for Health).—Sir, I beg to move :—

“That the Mysore Health Cess (Amendment) Bill, 1968 be taken into consideration.”